

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: SB 30-A

SPONSOR: Senator Garcia

SUBJECT: Public Records Exemption pertaining to the multiple hurricane deductible reimbursement program

DATE: December 14, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 30-A makes policyholder personal-identifying information contained in records or information held by the Department of Financial Services (DFS) pursuant to the multiple hurricane deductible reimbursement program created in Senate Bill 10-A or House Bill 9-A confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution. The bill provides an exception to this exemption, so that the name of the policyholder receiving such a reimbursement payment and the amount of such payment becomes public after the reimbursement payment has been made to the policyholder by the DFS.

This confidential and exempt personal-identifying information may be disclosed to another governmental entity if necessary for it to perform its duties and responsibilities. The receiving entity must maintain the confidential status of the information. The bill authorizes use of the confidential and exempt information in criminal, civil, or administrative proceedings so long as the confidential and exempt status of the information is maintained.

The bill further provides a statement of public necessity for the exemption, that the release of policyholders' personal identifying information is proprietary and confidential business information and could also impair the ability of the department to gather information it needs to complete its examination of applications for reimbursement. The bill also provides for future repeal and legislative review of this public records exemption.

The bill creates undesignated sections of the Florida Statutes.

II. Present Situation:

Multiple Hurricane Deductible Reimbursement Program within the Department of Financial Services under SB 10-A

Senate Bill 10-A and House Bill 9-A would establish a multiple hurricane deductible reimbursement program within the DFS to reimburse policyholders of residential property insurance whose property was damaged by multiple hurricanes and whose insurer applied more than one hurricane deductible to their insurance claims. The policyholder must apply to the DFS for reimbursement by March 1, 2005, on a form provided by the department and the application to DFS must identify the amount of the claims paid by the insurer for each hurricane, the deductible applied to each claim, and any additional information the department may require to verify the claim, including documentation from the insurer. The policyholder must have incurred damage in excess of the full amount of a single hurricane deductible.

Under the reimbursement program administered by the DFS, personal-identifying information could include the policyholder's name, address, social security number,¹ telephone number, and any other information that would identify the applicant.

Constitutional Access to Public Records

Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically includes the legislative, executive, and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide, by general law, for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

The Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that it is the intent of the Legislature that exemptions are to be created or maintained only if:

1. The exempted record or meeting is of a sensitive, personal nature concerning individuals;
2. The exemption is necessary for the effective and efficient administration of a governmental program; or
3. The exemption affects confidential information concerning an entity.²

¹ Social Security numbers are also exempt under the public records law under s. 119.0721, F.S.

The act also establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years and must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the 5th year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed in October of the 5th year, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if: (1) the exempted record or meeting is of a sensitive, personal nature concerning individuals; (2) the exemption is necessary for the effective and efficient administration of a governmental program; or (3) the exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions:

- < What specific records or meetings are affected by the exemption?
- < Whom does the exemption uniquely affect, as opposed to the general public?
- < What is the identifiable public purpose or goal of the exemption?
- < Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption: (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption; (2) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or (3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

² While the act purports to limit the bases for which the Legislature may adopt exemptions to public records or meetings requirements, one session of the Legislature may not bind a future session of the Legislature and, as a result, the limited bases established in the act are not exclusive or binding.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

III. Effect of Proposed Changes:

Section 1. This legislation makes policyholder personal-identifying information contained in records or information held by the Department of Financial Services (DFS) pursuant to the multiple hurricane deductible reimbursement program created in Senate Bill 10-A or House Bill 9-A confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution. The bill provides an exception to this exemption, so that the name of the policyholder receiving such a reimbursement payment and the amount of the payment becomes public *after* the reimbursement payment has been made to the policyholder by the DFS.

This confidential and exempt personal-identifying information may be disclosed to another governmental entity if necessary for it to perform its duties and responsibilities. The receiving entity must maintain the confidential status of the information. The bill authorizes use of the confidential and exempt information in criminal, civil, or administrative proceedings so long as the confidential and exempt status of the information is maintained.

The bill further provides that this exemption is subject to the Open Government Sunset Review Act of 1955 in accordance with s. 119.150, F.S., and will stand repealed on October 2, 2010, unless saved from repeal through reenactment by the Legislature.

Section 2. The bill contains a statement of public necessity which provides that it is a public necessity that policyholder personal identifying information in records or information held by the DFS pertaining to the multiple hurricane deductible reimbursement program be made confidential and exempt in order to effectively and efficiently administer a “one-time” governmental program. The legislative intent of this program as expressed in Senate Bill 10-A and House Bill 9-A is to reimburse policyholders in Florida for financial loss suffered due to the application of multiple hurricane deductibles which constitutes a valid and necessary public and governmental purpose and which serves the public health, safety, and welfare. Release of policyholders’ personal identifying information such as the name and address of the claimant, is proprietary and confidential business information as the availability of such information would identify insurance company insureds, which is proprietary and confidential business information. Without exempting policyholder personal-identifying information, such information is available for competitors to solicit the insureds.

The bill further provides that disclosure of such policyholder personal identifying information could also impair the ability of the department to gather information it needs to complete its examination of applications for reimbursement, to determine who qualifies for reimbursement, and ultimately thwart the state’s interest in ensuring the integrity of the program. However, the bill does provide an exception for the release of only the policyholder’s name and the amount the policyholder is reimbursed after such payment is made by the department. This exception provides the public with the ability to oversee the operation and integrity of the program.

Section 3. Provides that the act shall take effect on the same date that SB 10-A or HB 9-A takes effect, if such legislation is enacted in the same legislative session, or an extension thereof, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of the bill would protect a policyholder's personal-identifying information contained in records or information held by the DFS under the multiple hurricane deductible reimbursement program. Making such records confidential and exempt would protect the identity of an insurers' policyholders and protect the proprietary business interest of insurers. However, once payment has been made to an individual qualifying under the reimbursement program, only his or her name and the reimbursement amount received would become public information.

C. Government Sector Impact:

There may be some additional administrative costs for the DFS to redact exempt and confidential information under this bill subject to a public records request.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
